

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8612 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE PRADIP KUMAR SARKAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMJIBHAI KALUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR MD VAKIL for Petitioners
Mr.Sudhanshu Patel, learned A.G.P.
for Respondent Nos. 1 to 3
MR HS MUNSHAW for Respondent No. 4 & 5

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 28/12/1999

ORAL JUDGEMENT(Per M.R.Calla,J)

Rule. Mr. Sudhanshu Patel, learned A.G.P. waives service of rule on behalf of respondents Nos.1 to 3 and Mr.H.S.Munshaw waives service of rule on behalf of respondents Nos.4 and 5.

No return has been filed by any of the respondents despite sufficient opportunity.

The learned counsel for the petitioners has submitted that the possession of the land in question had been taken way back on 30.9.77. It was, thereafter, that the Notification under S.4 was issued on 16.1.97 and that under S.6 was issued on 28.8.97, the award was passed on 13.8.99 and the amount of compensation was paid on 16.8.99. The grievance of the petitioners is that although the possession had been taken way back on 30.9.77 and although it has been mentioned in the body of the Award itself that the petitioners shall be entitled to the amount of the rent from the date the possession is taken over, till date of the payment of the compensation, no amount of rent whatsoever had been paid although the petitioners stood deprived of their land on 30.9.77 itself. Whereas there is no reply on record Mr. Munshaw has sought to contend orally before this Court, contrary to the record and without placing any material on record, that out of lands of 21 Survey Numbers, the lands of 4 Survey Numbers were not given in possession and that even after the possession was given by the claimants they have been cultivating over a part of the land, of which the possession was with the respondents even as he admits that the Project is complete. In this view of the matter, we called upon the learned A.G.P. to clarify. The learned A.G.P. while making reference to the body of the award has candidly pointed out that as per the mention made in para 13 of the award itself the possession had been taken way back on 30.9.77, the Project is complete and that there is no dispute about the factual position that after taking the possession of the land in question on 30.9.77, on the basis of the agreement, which had been arrived at between the acquiring body and the claimants, the Special Land Acquisition Officer in his award has mentioned in para 14 that the possession of the land in question had been taken by the acquiring body and the rent and interest is to be paid and the learned A.G.P. has also made reference to para 15 wherein it has been categorically stated that there is nothing on record to show that any amount had been paid as advance compensation.

Thus the stand, which has been orally taken

before this court on behalf of respondents Nos.4 and 5, stands contradicted by the contents of the award itself and we find that the possession of the land under acquisition has been taken from the claimants on 30.9.77 and they are entitled to due amount of rent and interest from the date of the possession i.e. 30.9.77 till the amount of compensation is paid i.e. 16.8.9.

Therefore, this Special Civil Application succeeds. The respondents are directed to make the due payment of rent and interest in accordance with law also keeping in view the amendment of 1984 in the Act, to the petitioners from 30.9.77 till the date of payment of compensation i.e. on 16.8.99. The direction, as aforesaid, shall be carried out at the earliest possible date but in no case later than a period of three months from today. The Special Civil Application is allowed. Rule is made absolute. In the facts and circumstances of this case, no order as to costs.